



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA AT NAIROBI

crim app 119 of 82

PETER RICHARD MWAMBUSA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Appeal from an order of summary rejection of an appeal by the High Court of Kenya at Nairobi
(Chesoni, J.) dated 17th August, 1982 in**

Criminal Appeal No. 596 of 1982)

JUDGEMENT OF THE COURT

The appellant was charged before the Chief Magistrate at Nairobi with the following offence

“Stealing by servant contrary to Section 281 of the Penal Code.

Particulars of Offence

Peter Richard Mwambusa: On April 21, 1982, at Embakasi Air Force Camp within Nairobi Area, being a servant to Armed Forces Canteen Organisation as Assistant Manager, stole Kshs 10,000 the property of Armed Forces Canteen Organisation."

To this charge the appellant pleaded as follows -

"It is true I stole Kshs 10,000 from the employer as charged."

The facts of the case were stated by the prosecutor as follows -

"The accused was employed as assistant Manager by Air Force Canteen, the complainant. On April, 13, 1982 the accused was given Kshs 10,000 by a warrant officer to buy a refrigerator. When the complainant checked for a fridge was bought the appellant was not there. Investigation was carried out and it was found that the accused stole the money instead of using it to a fridge. He disappeared from duty. He was traced and arrested on June 23, 1982. Kshs 10,000 or any part of it was not recovered."

The appellant admitted these facts, and was convicted of offence charged on his own plea in mitigation the appellant offered to repay the money if given 5 weeks.

The Chief Magistrate passed sentence in the following term -

"Accused first offender. Pleaded guilty. There is no substance in his offer to repay the money, since he

absconded after stealing it. Two years imprisonment."

The appellant appealed to the High Court against conviction and sentence on the following grounds -

- "1. The learned Chief Magistrate erred in that he convicted the appellant on an equivocal plea of guilty.
2. The learned Chief Magistrate erred in that he did not appreciate that the facts of the case related by the prosecutor did not disclose or support the offence of theft of the property allegedly stolen not belonging to Armed Forces Canteen Organisation.
- 3 The sentence was excessive having regard to all circumstances of the case."

The appeal to the High Court was summarily rejected by Chesoni J. The appellant, represented by Mr Njau has now brought an appeal to this court against the order of summary dismissal, the grounds of appeal being substantially the same as in the High Court. Mr Njau submits that as the prosecutor did not in terms state that the money stolen by the appellant was the property of the Armed Forces Canteen Organisation, it follows that the appellant's plea of guilty to stealing by servant was equivocal and that his first appeal should not have been summarily rejected. We see no merit in this submission. The appellant admitted in unequivocal terms in his plea that the money stolen by him was the property of his employer stated in the charge as being the Armed Forces Canteen Organisation. There was no need for the prosecutor to repeat this admitted fact in his statement of the facts.

The plea in this case contained no ambiguity or explanation, so that its construction involved no question of law, see *Wakelin v R* [1951] 18 EACA 185.

Accordingly no appeal lay to the High Court against conviction, see Section 348 of the Criminal Procedure Code. All that remained in the High Court was the appeal against sentence, and the judge acted within his jurisdiction in dismissing it summarily, as he did, see Section 352(2) of the Criminal Procedure Code. We do not think he exercised his discretion wrongly in so doing.

There are no merits in this appeal, and we order that it be dismissed.

Delivered at Nairobi this 11th day of January, 1983

E J E LAW

JUDGE OF APPEAL

K D PORTER

JUDGE OF APPEAL

A R W HANCOX

AG JUDGE OF APPEAL